

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

FRANK BROWN,

Plaintiff,

-v.-

9:08-CV-0009
(TJM)

THOMAS G. EAGEN, *et al.*,

Defendants.

APPEARANCES:

FRANK BROWN
Plaintiff, *pro se*

HON. ANDREW M. CUOMO
Office of the Attorney General
State of New York
Department of Law
The Capitol
Albany, New York 12224

RICHARD LOMBARDO, ESQ.

THOMAS J. MCAVOY, SENIOR U.S. DISTRICT JUDGE

DECISION and ORDER

Presently before the Court is a letter request from the plaintiff seeking an indeterminate stay of the proceedings in this action. Dkt. No. 59. Defendants filed a response in which they state that they take no position with respect to plaintiff's motion, but defendants do request that any stay be to a date certain. Dkt. No. 60.

By way of background, this action was filed on January 4, 2008. Dkt. No. 1. On August 7, 2008 defendants filed a motion to dismiss. Dkt. No. 50. Plaintiff's original response date was September 9, 2008. On August 19, 2008 an extension was granted to plaintiff, extending his response date to September 30, 2008. Dkt. No. 55. At that

time plaintiff was housed at Green Haven and was alleging that his legal materials had been destroyed and he was having difficulty accessing the law library. On September 9, 2008, noting that plaintiff was now asserting that he was in a mental health facility with no access to a law library, plaintiff was given additional time, to November 17, 2008, to respond to the motion to dismiss. Dkt. No. 56. On October 22, 2008 the Clerk provided plaintiff with a free copy of his complaint and the exhibits that he claimed he needed in order to respond to the motion, and reaffirmed that the response date remained November 17, 2008. Dkt. No. 57. Plaintiff was at CNY Psychiatric Center at the time of the October 2008 correspondence.

The pending request for additional time to respond to the motion to dismiss was filed on November 19, 2008. Dkt. No. 59. In the request plaintiff states that he is “entitled to an extension until I am out of this mental hospital ... Any time a person or prisoner is sent to a mental hospital like this one then all time is stopped to file motions ...” *Id.* In their response, defendants did not address the legal assertions made by plaintiff. Dkt. No. 60. However defendants advised the Court that “plaintiff is expected to be returned to a facility within the custody of the Department of Correctional Services within the new few weeks.” *Id.* As of the writing of this Order, the Department of Correctional Services’ website reflects that plaintiff has not been returned to a DOCS facility.

The Court is unaware of any legal mandate similar to that alluded to by plaintiff, and does not believe there is legal mandate that this Court afford plaintiff a stay of this action. Moreover, this Court is aware that a number of *pro se* litigants proceed with their litigation while house at the CNY Psychiatric Center. Further, the history of this

case suggests that plaintiff had ample time to respond to the motion while still at a DOCS facility where law library facilities were available.

Nevertheless, in light of plaintiff's *pro se* status, the Court will afford plaintiff an extension of time in which to respond to the Motion. Accordingly, plaintiff will be granted an extension to **February 23, 2009** to file and serve his response to defendants' motion to dismiss.

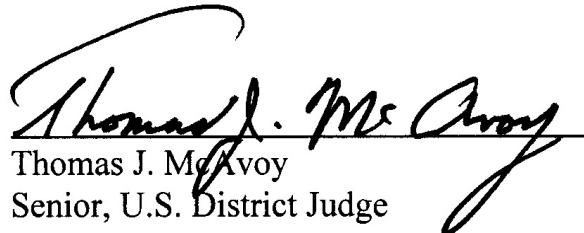
WHEREFORE, it is hereby

ORDERED, that plaintiff's request for a stay of this action (Dkt. No. 59) is denied. Plaintiff shall file and serve his response to defendants' motion to dismiss on or before **February 23, 2009**, and it is further

ORDERED, that the Clerk serve a copy of this Order on the Plaintiff by regular mail.

IT IS SO ORDERED.

Dated: January 7, 2009


Thomas J. McAvoy
Senior, U.S. District Judge